

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LESSARD, et al.,

Plaintiffs,

Civil Action No. 00-74360

Civil Action No. 87-70992

v.

CITY OF ALLEN PARK, et al.,

Defendants.

Geoffrey H. Seidlein (P32401)
Thomas A. Bengtson (P10677)
Stacy L. Hissong (P55922)
Attorney for Defendants Southgate-
Wyandotte Relief Drain Drainage District
and Ecorse Creek Pollution Abatement
District No. 1
5801 West Michigan Avenue
P.O. Box 80857
Lansing, MI 48908-0857

FILED
2003 MAY 29 P 12:16
U.S. DIST. COURT CLERK
EAST DIST. MICH.
DETROIT

**THIRD-PARTY DRAINAGE DISTRICT DEFENDANTS'
BRIEF IN SUPPORT OF OBJECTIONS TO PLAINTIFFS' SUBPOENA TO
GREELEY AND HANSEN, L.L.C.**

Southgate-Wyandotte Relief Drainage District a/k/a Southgate-Wyandotte Relief Drain Drainage District, a/k/a Southgate-Wyandotte Drain Drainage District, and Ecorse Creek Pollution Abatement District NO. 1, a/k/a Ecorse Creek Pollution Abatement Drain ("Third Party Defendants Drainage Districts"), by and through their attorneys HUBBARD, FOX, THOMAS, WHITE & BENGTON, P.C., submit this Brief in support of their objections to the subpoena issued to Greeley and Hansen, L.L.C.

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INTRODUCTION

On September 10 and 11, 2000, the area serviced by the Downriver Sewer System was hit by a massive rainstorm that exceeded the guidelines for a 100-year storm event. These Plaintiffs initiated a complaint against the Downriver Communities and Wayne County, alleging trespass nuisance and a taking in violation of the Michigan Constitution.

STATEMENT OF RELEVANT FACTS

On May 23, 2003, Plaintiffs issued a subpoena to Greeley and Hansen, L.L.C., requesting the following documents:

Any and all documents, correspondence, reports, notes, emails either received, created and/or controlled by the department which relates to, discusses, mentions or involves the Independent System Assessment of the Southgate/Wyandotte Relief Drain Drainage District to be used for the development of a High Level Implementation Plan for the Southgate/Wyandotte Relief Drain Drainage District. *Excluded from this request are any documents, correspondence, reports, notes, email either received, created and/or controlled by deponent which relate to the opinions held by deponent which were acquired or developed in anticipation of testimony in the litigation entitled Lessard v. Allen Park, Civil Action No. 00-74306 (E.D. Mich. Feikens, J.)* (See Exhibit A; emphasis in original.)

Third Party Defendants Drainage Districts previously filed a preliminary expert witness list naming Paul Vogel, an engineer and employee of Greeley and Hansen, L.L.C.

ARGUMENT

Because an employee of Greeley and Hansen, L.L.C., has been named as a potential expert witness, Plaintiffs' subpoena violates the Federal Rules of Civil Procedure as it is issued to an expert witness named by a party [in violation of F.R.C.P. 26(b)(4)] and it seeks trial preparation materials [in violation of F.R.C.P. 26(b)(3)]. The subpoena also violates this Court's Rule 16 Pre-Trial Discovery Order regarding the deadline for disclosure of the primary expert

witnesses to testify and for production of those expert witness' reports.

Furthermore, the subpoena violates the intent of this Court's Orders dated May 9, 2003, in that those Orders quashing Plaintiffs' subpoenas to Wade Trim, Nagle Construction and Hennessey Engineering specified that discovery was limited to:

- A. Downriver System Operation "from August 10, 2000, through September 12, 2000"; and
- B. "[E]xperts' written reports and depositions."

Plaintiffs' subpoena plainly exceeds the parameters of discovery regarding both testifying and non-testifying experts retained by a party, as established by the Federal Rules of Civil Procedure. The subpoena also exceeds the specific parameters of discovery in this case as established by both the Rule 16 Pre-Trial Discovery Order and the Orders dated May 9, 2003. Therefore, Third Party Defendants Drainage Districts respectfully request this Honorable Court issue an Order quashing Plaintiffs' subpoena to Greeley and Hansen, L.L.C.

Respectfully submitted,

HUBBARD, FOX, THOMAS,
WHITE & BENGTON, P.C.

Dated: May 28, 2003

BY: 

Geoffrey H. Seidlein (P32401)

Stacy L. Hissong (P55922)

Attorneys for Defendants Drainage Districts

HUBBARD, FOX, THOMAS,

WHITE & BENGTON, P.C.

5801 W. Michigan Avenue

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EXHIBIT A

May 27, 2003 6:00PM

GREELEY & HANSEN

No. 2260 P. 3/9

United States District Court Eastern District of Michigan



Subpoena in a Civil Case and Return of Service Form

Plaintiff(s):

LESSARD, ET AL.

Defendant(s):

v. CITY OF ALLEN PARK, ET AL.

TO: GREELEY & HANSEN, LLC
211 W. Fort Street
Detroit, MI 48226

CASE NO. 00-74306 / 87-70992

JUDGE JOHN FEIKENS

- ☐ SUBPOENA FOR ATTENDANCE AT TRIAL
☐ SUBPOENA FOR ATTENDANCE AT A DEPOSITION
☒ DOCUMENT PRODUCTION REQUEST ONLY
☐ PROPERTY INSPECTION REQUEST ONLY

COMMAND TO APPEAR

YOU ARE HEREBY COMMANDED to appear at the place, date and time specified below to give testimony in the above case, and, if so indicated, to bring certain documents with you.

Place:

Date:

Time:

☐ APPEARANCE WITH DOCUMENTS (SEE DESCRIPTION BELOW)☐ APPEARANCE WITHOUT DOCUMENTS

COMMAND FOR DOCUMENTS

YOU ARE HEREBY COMMANDED to have the following documents, objects or things delivered to the place listed below, or allow the inspection of the below-listed property at the date and time specified.

Place:

975 E. Jefferson Avenue, Detroit, MI 48207-3101

Date: FRIDAY, JUNE 6, 2003

Time 2:00 PM

Description of documents/items to be produced or property to be inspected:

Any and all documents, correspondence, reports, notes, email either received, created and/or controlled by deponent which relates to, discusses, mentions or involves the Independent System Assessment of the Southgate/Wyandotte Relief Drain Drainage District to be used for the development of a High Level Implementation Plan for the Southgate/Wyandotte Relief Drain Drainage District. Excluded from this request are any documents, correspondence, reports, notes, email either received, created and/or controlled by deponent which relate to the opinions held by deponent which were acquired or developed in anticipation of testimony in the litigation entitled Lessard v. Allen Park, Civil Action No. 00-74306 (E.D. Mich. Feikens, J.)

This subpoena is issued by (name, address and telephone number of attorney):

David R. Dubin, Esq.
975 E. Jefferson Avenue
Detroit, MI 48207-3101
(313) 392-00105

Date of execution

May 23, 2003

☒ On behalf of the Plaintiff
☐ Defendant

Signature of issuing attorney/court officer

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EASTERN DISTRICT OF MICHIGAN
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PROOF OF SERVICE

I CERTIFY that a copy of Defendant Drainage Districts' Objection to Subpoena to Greeley and Hansen, L.L.C. and supporting Brief, was sent to counsel of record at the addresses listed below, via first class mail on May 28, 2003.

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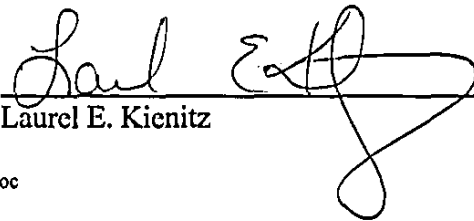
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